

Workers' Compensation in California



A Guidebook for Injured Workers

prepared for the
California Commission on Health and Safety and Workers' Compensation

2002

Acknowledgments

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How To Use This Guidebook

This guidebook gives an overview of the California workers' compensation system. It is meant to help workers with job injuries understand their basic legal rights, the steps to take to request workers' compensation benefits, and where to seek further information and help if necessary.

The information in this guidebook is true in most situations. However, the workers' compensation system is complicated. The guidebook does not fully describe many rules, exceptions, and deadlines that may apply to your case. For example, if your date of injury was several years ago, your benefits and the steps you should take may be different. Also, a union contract may give you additional rights or require different procedures.

All workers, whether or not you have a job injury, should read:

Chapter 1, "The Basics of Workers' Compensation."

If you are an injured worker, you should read:

Chapter 2, "After You Get Hurt on the Job."

In that chapter, make sure to review **"Keep Your Claim on Track"** (page 20) for basic tips on how to take charge of your case and protect your rights, especially if you are encountering delays or other problems in the workers' compensation system.

The following chapters cover different kinds of workers' compensation benefits and how to continue working for your employer. You can read some or all of these chapters, depending on your particular situation:

Chapter 3, "Temporary Disability Benefits"

Chapter 4, "Working After Your Injury"

Chapter 5, "Permanent Disability Benefits"

Chapter 6, "Vocational Rehabilitation Benefits"

Because this guidebook cannot cover all possible situations faced by injured workers, additional resources are listed in **Chapter 7, "For More Information and Help."** They include governmental agencies, attorneys, health care providers, unions, and support groups, as well as books and other materials. You should use those resources to learn more about workers' compensation or to get personalized help with your case.

Table of Contents

Chapter 1. The Basics of Workers' Compensation	7
Chapter 2. After You Get Hurt on the Job	13
Keep Your Claim on Track	20
Chapter 3. Temporary Disability Benefits	23
Chapter 4. Working After Your Injury	31
Chapter 5. Permanent Disability Benefits	37
Chapter 6. Vocational Rehabilitation Benefits	45
Chapter 7. For More Information and Help	51
Questions & Answers About State Information & Assistance Services	56
Questions & Answers About Attorneys	58
Glossary	61



The Basics of Workers' Compensation

What is workers' compensation?

If you get hurt on the job, your employer is required by law to pay for workers' compensation benefits. You could get hurt by:

- **One event at work.** Examples: hurting your back in a fall, getting burned by a chemical that splashes on your skin, getting hurt in a car accident while making deliveries.

—or—
- **Repeated exposures at work.** Examples: hurting your wrist from doing the same motion over and over, losing your hearing because of constant loud noise.



Workers' compensation covers some, but not all, stress-related (psychological) injuries caused by your job. For information about what is covered, use the resources in Chapter 7, "For More Information and Help."

What are the benefits?

They can include:

Medical Care. Paid for by your employer, to help you recover from an injury or illness caused by work.

Temporary Disability Benefits. Payments if you lose wages because your injury prevents you from doing your usual job while recovering.

Permanent Disability Benefits. Payments if you don't recover completely and will always be limited in the kinds of work you can do.

Vocational Rehabilitation. Job placement counseling and possibly retraining, if you are unable to return to your old job and your employer doesn't offer other work.

Death Benefits. Payments to your spouse, children, or other dependents if you die from a job injury or illness.

For examples of workers' compensation payments, see page 11.

Can I choose the doctor who will treat me?

It depends on whether you tell your employer in *writing* — *before* you are injured — the name and address of your personal physician. This is called “predesignating” your personal physician.

- **If you predesignate:** You will be allowed to see your personal physician right after you are injured. You may switch doctors later, if necessary.
- **If you don’t predesignate:** Your employer usually will have the right to choose the doctor who treats you during the first 30 days after your employer learns about your injury or illness.

How do I predesignate?

Notify your employer in writing. You can prepare your own written statement. You also have the option of using the form on page 10, or a form provided by your employer.

Make sure to include the following information:

1. Name of your employer
2. Statement that if you are hurt on the job, you designate your personal physician or personal physician’s medical facility to provide medical care. Give the name, address, and phone number.
3. Your name
4. Your signature
5. Date

You can predesignate a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who treated you in the past and has your medical records. Or you can predesignate the office, clinic, or hospital where the doctor treated you. (If you give your employer the name of your personal chiropractor or personal acupuncturist in writing before you are injured, you may *switch to* this chiropractor or acupuncturist upon request during the first 30 days.)

Exceptions: Some employers have contracts with health care organizations (HCOs) to treat workers hurt on the job. If your employer has this kind of contract, there are different rules on choosing medical care. Your employer must give you written information about those rules.

DID YOU KNOW?

- ◆ Medical care must be paid for by your employer if you get hurt on the job — whether or not you miss time from work.
- ◆ You may be eligible to receive benefits even if you are a temporary or part-time worker.
- ◆ You may be covered by workers' compensation as an employee even if you are called an "independent contractor."
- ◆ You don't have to be a legal resident to receive most workers' compensation benefits.
- ◆ You receive benefits no matter who was at fault for your job injury.
- ◆ You can't sue your employer for a job injury (in most cases).
- ◆ It's illegal for your employer to punish or fire you for having a job injury or for requesting workers' compensation benefits when you believe your injury was caused by your job.

Why is the choice of doctor important?

Your treating doctor:

- Decides what type of medical care you'll get for your job injury or illness.
- Helps determine when you can return to work, and helps identify the kinds of work you can do safely while recovering.
- Refers you to specialists if necessary.
- Writes medical reports that will affect the benefits you receive.
(Note, however, that acupuncturists cannot write many of the reports that affect benefits.)

How can I avoid getting hurt on the job?

It's best to *prevent* injuries before they happen. Employers are required to have an Injury and Illness Prevention Program. The program must include worker training, workplace inspections, and procedures for correcting unsafe conditions promptly. Learn about and participate in your employer's program. Report unsafe conditions to your employer and union. If they don't respond, call Cal/OSHA, the state agency that enforces health and safety laws.

Personal Physician Form

To (name of employer): _____

In case I sustain a job-related injury or illness, I designate my personal physician to provide medical care immediately after injury:

Personal physician: _____
(physician's name, office, clinic, or hospital)

Address: _____

Telephone: _____

Employee's signature: _____

Name (print): _____

Date: _____

Instructions: You can predesignate a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who treated you in the past and has your medical records. Or you can predesignate the office, clinic, or hospital where the doctor treated you. If you predesignate your personal physician, you will be allowed to see this doctor right after you are injured. If you give your employer the name of your personal chiropractor or personal acupuncturist in writing before you are injured, you may *switch to* this chiropractor or acupuncturist upon request during the first 30 days after your employer learns about your injury or illness.

Workers' Compensation Benefits for Workers Whose Date of Injury Is 2003 or Later

Temporary Total Disability Benefits

Date of Injury	Minimum Payments	Maximum Payments
2003	\$126 per week	\$602 per week
2004	\$126 per week	\$728 per week
2005	\$126 per week	\$840 per week
2006	\$126 per week	\$840 per week or the state average weekly wage, whichever is greater
2007 or later	Minimum and maximum payments increase every year to reflect increases in the state average weekly wage.	

Vocational Rehabilitation Maintenance Allowance

\$126 per week (minimum) to \$246 per week (maximum)

Permanent Disability Benefits — Examples

The following are only examples. Benefits are available for ratings between 1% and 100%, for all dates of injury.

Rating of 30%, date of injury in 2004: \$29,150 (total)

Rating of 30%, date of injury in 2005: \$32,065 (total)

Rating of 4%, date of injury in 2004: \$3,200 (total)

Rating of 4%, date of injury in 2005: \$3,520 (total)

Death — Examples involving three or more total dependents

The following are only examples. Benefits are also available if there are fewer than three total dependents, or if there are partial dependents.

Burial expenses: up to \$5,000

Death benefits if there are three or more total dependents:

Date of injury 2003, 2004, or 2005: \$160,000 (total)

Date of injury 2006 or later: \$320,000 (total)

(Regardless of the amounts listed above, death benefits paid to a totally dependent child continue until the child reaches age 18. If the child is physically or mentally incapacitated, benefits continue until the child's death.)





After You Get Hurt on the Job



For tips on how to “Keep Your Claim on Track,” see page 20. See also Chapter 7, “For More Information and Help.”

What should I do if I have a job injury?

■ Report the injury to your employer

Tell your supervisor right away. If your injury or illness developed gradually (like tendinitis or hearing loss), report it as soon as you learn or believe it was caused by your job.

Reporting promptly helps prevent problems and delays in receiving benefits, including medical care you may need. If your employer does not learn about your injury within 30 days and this prevents your employer from fully investigating the injury and how you were injured, you could lose your right to receive workers' compensation benefits.

■ Get emergency treatment if needed

If it's a medical emergency, go to an emergency room right away. Your employer may tell you where to go for treatment. Tell the health care provider who treats you that your injury or illness is job-related.

■ Fill out a claim form and give it to your employer

Your employer must give or mail you a claim form within one working day after learning about your injury or illness. You use it to request workers' compensation benefits. If your employer does not give you a claim form, get one from a state Information & Assistance officer (see pages 56–57).

Read all of the information that comes with the claim form. Fill out and sign the “employee” portion of the form. Describe your injury completely. Include every part of your body affected by the injury. Give the form to your employer. This is called “filing” the claim form. Do this right away to avoid possible problems with your claim.

■ Get good medical care

Get good medical care to help you recover. You should be treated by a doctor who understands your particular type of injury or illness. Tell the doctor about your symptoms and the events at work that you believe caused them. Also describe your job and your work environment.

What happens after I file the claim form?

Your employer must fill out and sign the “employer” portion of the form and give the completed form to a claims administrator. This person handles workers’ compensation claims for your employer. (Most claims administrators work for insurance companies or other organizations that handle claims for employers. Some claims administrators work directly for large employers that handle their own claims. This person may also be called a claims examiner or claims adjuster.) Your employer must give or mail you a copy of the completed form within one working day after you filed it. **Keep this copy.**

The claims administrator must decide within a reasonable time whether to accept or deny your claim.

“Accepting” the claim means the claims administrator agrees your injury is covered by workers’ compensation. If your claim is accepted, you will receive paid medical care for your injury. You may also be eligible for payments to help make up for lost wages. To learn about these payments, see Chapter 3, “Temporary Disability Benefits.”

“Denying” the claim means the claims administrator believes your injury is not covered by workers’ compensation. If the claims administrator sends you a letter denying your claim, you have a right to challenge the decision. Don’t delay, because there are *deadlines* for filing the necessary papers. To get help with your claim, use the resources in Chapter 7.

NOTE

On the claim form, you will see a message telling you that it is against the law for anyone to commit fraud in order to:

- ◆ obtain workers’ compensation benefits or payments, *or*
- ◆ deny an injured worker these benefits.

Fraud is a felony. This law applies to everyone in the workers’ compensation system, including injured workers, employers, claims administrators, doctors, and attorneys. To report fraud, contact a local district attorney’s office or the California Department of Insurance (DOI). You can call the DOI toll-free at 1-800-927-4357, and ask for the phone number of the nearest office of their Fraud Division. See also the DOI website: www.insurance.ca.gov (link to Fraud Information).

It's been more than 90 days since I filed a claim form, and I have not heard from the claims administrator. Does this mean my claim is accepted?

If the claims administrator doesn't send you a letter denying your claim within 90 days after you filed the form or reported your injury, your claim is considered accepted in most cases.

The claims administrator hasn't accepted or denied my claim yet, but I need medical care for my injury now. What can I do?

Sometimes an employer will pay for medical care even before a claim is accepted. Ask your supervisor or someone else in management whether your employer will pay for medical care now, while you are waiting for a decision on your claim.

If your employer won't pay, use your own health insurance to get medical care. Your health insurer will be paid later if your injury is covered by workers' compensation.

If you don't have health insurance, try to find a doctor, clinic, or hospital that will treat you without immediate payment. They will be paid later if your injury is covered by workers' compensation.

Can I choose the doctor who will treat me for my job injury?

It depends on whether you predesignated your personal physician. This means that *before* you were injured, you gave your employer the name and address of your personal physician *in writing*. To review how to predesignate your personal physician, see Chapter 1, "The Basics of Workers' Compensation."

If you predesignated:

You may see your personal physician for treatment right after you are injured, and you may switch doctors later if necessary. (But if the claims administrator hasn't accepted your claim yet, see the previous question.) If you gave your employer the name of your personal chiropractor or acupuncturist in writing before you were injured, you may *switch to* your chiropractor or acupuncturist upon request, after you first see a doctor chosen by the claims administrator.

If you didn't predesignate:

The claims administrator is usually allowed to choose the doctor who treats you during the first 30 days after your employer learns about your injury or illness. (See pages 16–17 for exceptions.)

After 30 days, you are allowed to switch to a doctor of your choice if you still need medical care.

Some employers have contracts with health care organizations (HCOs) to treat workers hurt on the job. If your employer has this kind of contract, there are different rules on choosing medical care. Your employer must give you written information about those rules.

Switching to another treating doctor:

In some situations (as explained above), you have a right to switch doctors. Depending on the type of injury you have, the new treating doctor can be a medical doctor, osteopath, psychologist, acupuncturist, optometrist, dentist, podiatrist, or chiropractor.

You or your new treating doctor must give the claims administrator the doctor's name and address. This allows the claims administrator to obtain medical reports and pay for your medical care. You may switch again if necessary.

Remember, your choice of doctor is very important! See Chapter 1, page 9. Because the treating doctor plays such an important role, you should be seen by a doctor who knows how to treat your type of injury or illness and who understands the workers' compensation system.

I don't like the medical care I'm getting. Is there any way I can switch to a different doctor in the first 30 days?

If you did not predesignate, speak with your employer or the claims administrator and see if they will agree to a new doctor of your choice. If agreement is not possible, you still have a right to change doctors one time during the first 30 days, but usually the claims administrator is allowed to choose the new doctor.

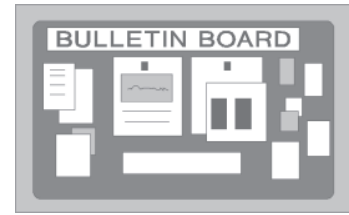
Sometimes employers *lose* the right to choose who will treat an injured worker, even if the worker did not predesignate. You can see a doctor of your choice in the first 30 days if your employer:

- Didn't post required information about your workers' compensation rights; *or*

DID YOU KNOW?

- ◆ You have a right to request and receive copies of all medical reports that affect your benefits.
- ◆ You have a right to have another person present during a medical examination or to tape record the examination.

- ◆ Your employer is required to post information about your workers' compensation rights, including the right to predesignate your personal physician in case of job injury.



- Didn't tell you about your right to predesignate your personal physician; *or*
- Sends you to treatment that is completely inadequate; *or*
- Refuses to provide necessary medical care.

If you have questions or need help, use the resources in Chapter 7.

I don't agree with a medical report written by my treating doctor. What can I do?

Your treating doctor is required to send medical reports to the claims administrator describing your injury and how you are recovering. If you have questions about a particular report, ask the doctor.

Sometimes different doctors have different opinions about the cause of an injury, the treatment that is needed, the type of work that you can do while recovering, or other questions. You have a right to challenge a medical report. Here are the steps to take:

1. First, send a letter to the claims administrator stating that you disagree with the medical report. If you do not have an attorney, in some cases you must send the letter within 30 days after you received the medical report. If you have an attorney, contact your attorney right away. In some cases, the deadline for your attorney to send the letter is 20 days after receiving the medical report.
2. Second, get a medical opinion, or evaluation, from another doctor:
 - If you don't have an attorney, the claims administrator must send you instructions on how to contact the state Industrial Medical Council (IMC) to select a qualified medical evaluator (QME). QMEs are doctors who are certified by the IMC to conduct medical evaluations in workers' compensation.
 - If you have an attorney, your attorney and the claims administrator may agree on a doctor called an agreed medical evaluator (AME). AMEs are not required to be certified by the IMC. If agreement cannot be reached, your attorney will select a QME.

The QME or AME will examine you and write a medical-legal report describing your condition.

Important! You or your attorney should choose the QME or AME carefully. The medical-legal report will affect your benefits. In many cases, you will not be able to choose another QME or AME. (If you don't have an attorney, use the resources in Chapter 7.)

For more information about medical evaluations, call the IMC at 1-800-794-6900. Ask for their written guides "Your Medical Evaluation" and "Getting Your Medical Evaluation." See also the IMC website: www.dir.ca.gov/imc.

If the claims administrator doesn't agree with a medical report, can he or she require me to be examined by a medical evaluator?

Yes. Here is how the QME or AME would be selected:

- If you don't have an attorney, the claims administrator can require you to be examined by a QME. The claims administrator must send you instructions on how to contact the IMC (as described above), and must let *you* select the QME.
- If you have an attorney, your attorney and the claims administrator may agree on an AME to examine you. If agreement cannot be reached, the claims administrator will select a QME.

Who decides what type of work I can do while recovering?

Your treating doctor is responsible for explaining in a medical report:

- What kind of work you can and can't do while recovering
- What changes are needed in your work schedule or assignments.

You, your treating doctor, your employer, and your attorney (if you have one) should review your job description and discuss the changes needed in your job. For example, your employer might give you a reduced work schedule or have someone else do heavy lifting. See Chapter 4, "Working After Your Injury."



If you disagree with your treating doctor, you must promptly write to the claims administrator about the disagreement, or you may lose important rights. To review the steps you can take if you disagree with a medical report, see pages 17–18.

I'm afraid I might be fired because of my injury. Can my employer fire me?

It's illegal for your employer to punish or fire you for having a job injury, or for filing a workers' compensation claim when you believe your injury was caused by your job. It's also illegal for your employer to punish or fire co-workers who testify in your case. The California Labor Code (section 132a) prohibits this kind of discrimination.

Also, the federal Family and Medical Leave Act (FMLA) says that an employer with 50 or more employees usually must let you take unpaid leave for up to 12 weeks, without losing your job, if you need time off for a serious medical condition.

If you do not fully recover from your injury, the federal Americans With Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) make it illegal for your employer to discriminate against you because of a serious disability.

If you feel your job is threatened, find someone who can help. Use the resources in Chapter 7. Note that there are *deadlines* for taking action to protect your rights.

Besides workers' compensation benefits, can I get any other financial assistance?

Other types of assistance may be available:

- State Disability Insurance (SDI) or unemployment insurance (UI) benefits paid by state government when workers' compensation payments are delayed or denied.
- Social Security disability benefits paid by the U.S. government for total disability (these benefits may be reduced by workers' compensation payments that you receive).
- Benefits offered by employers and unions, such as sick leave, group health insurance, long term disability insurance (LTD), and salary continuation plans.
- A claim or lawsuit if your injury was caused by someone other than your employer.

To learn more about these other kinds of assistance, use the resources in Chapter 7.

KEEP YOUR CLAIM ON TRACK

Many injured workers get their benefits quickly, with no trouble at all. Others face problems and delays. This page gives tips on how to take charge of your case and make sure your rights are protected.

Whether or not you have a problem:

- ◆ **Keep good records.** You will probably fill out and receive many forms and other papers. Keep copies of *everything*, including envelopes showing postmarks!
 - Keep notes of all discussions you have with the people involved in your claim.
 - Keep track of your medical condition and how it affects your ability to work.
 - Request in writing that the claims administrator give you copies of all medical reports and other documents.
 - Save pay stubs and time sheets showing your income, the dates you worked, and when you were off work.
 - Keep records of any out-of-pocket expenses that workers' compensation could cover (like prescriptions or travel costs to medical appointments).
- ◆ **Learn more about workers' compensation.** The laws and procedures in workers' compensation are complicated. What applies to another injured worker may not apply to you. Learn what your rights are, and don't be afraid to ask questions.

If you have a concern, speak up. See whether **your employer** or **the claims administrator** can agree to resolve the problem. If this doesn't work, don't delay getting help. Try the following:

- ◆ **Contact an Information & Assistance officer.** State I&A officers answer questions and help injured workers. They may provide information and forms and help resolve problems. Some I&A officers hold workshops for injured workers. For more information, see pages 56–57, or go to www.dir.ca.gov/dwc. To contact a local office, check the Government Pages at the front of the white pages of your phone book. Look under: State Government Offices/Industrial Relations/Workers' Compensation.
- ◆ **Consult an attorney.** Lawyers who represent injured workers in their workers' compensation cases are called applicants' attorneys. Their job is to protect your rights, plan a strategy for your case, gather information to support your claim, keep track of deadlines, and represent you in hearings before a workers' compensation judge. For more information, see pages 58–59. You can get names of applicants' attorneys from the State Bar of California (1-415-538-2120; website: www.calbar.ca.gov), a local bar association, or the California Applicants' Attorneys Association (1-800-459-1400; website: www.caaa.org).
- ◆ **Contact your union.** Your union may be able to help resolve problems, tell you about other benefits, negotiate changes needed in your job, protect you from job discrimination, and refer you to legal services.
- ◆ **Represent yourself.** If you can't get help from the above resources, you can prepare your own case and request a hearing before a workers' compensation judge. For instructions, contact an Information & Assistance officer (see above).



Temporary Disability Benefits



For tips on how to “Keep Your Claim on Track,” see page 20. See also Chapter 7, “For More Information and Help.”

What are temporary disability benefits?

If your injury prevents you from doing your usual job while recovering, you may be eligible for temporary disability (TD) benefits.

TD benefits are payments you receive if you lose wages because:

- Your treating doctor says you are unable to do your usual job for more than three days, or you are hospitalized overnight.
—and—
- Your employer does not offer you other work that pays your usual wages while you recover.

What are the different types of TD benefits?

There are two types of TD benefits:

- If you cannot work *at all* while recovering, you receive temporary *total* disability (TTD) payments.
- If you can do *some* work while recovering and your employer offers you this type of work, you receive temporary *partial* disability (TPD) payments.

How much are TD benefits?

As a general rule, TD benefits are two-thirds of the gross (pre-tax) wages you lose while you’re recovering from a job injury. However, you can’t receive more than a maximum weekly amount or less than a minimum weekly amount, as set by law.

You don’t pay federal, state, or local income taxes on TD benefits. Also, you don’t pay Social Security taxes, union dues, or retirement fund contributions on these benefits.

Other Benefits Besides TD

- ◆ If you are hurt on the job, your employer must pay for medical care to help you recover. See Chapter 2, “After You Get Hurt on the Job.”
- ◆ You may be eligible for other financial assistance, such as State Disability Insurance, if TD payments are delayed or denied. To find out about these benefits, see Chapter 7.
- ◆ TD benefits are paid only while you are recovering. Some injured workers later receive permanent disability benefits and vocational rehabilitation services and payments, which are different from TD benefits. To find out about these other benefits, see Chapters 5 and 6.

The information in this chapter gives you a rough idea of TD benefit amounts. Determining exact TD amounts can be complicated, especially for workers who:

- had a second job when injured
- had seasonal jobs
- had wages that rose or fell
- earned other income, such as tips, overtime, bonuses, housing, clothing, or car allowances
- were scheduled for a wage increase after the date of injury
- received TD benefits more than two years after the date of injury.

What payments will I receive if I’m on TTD?

Temporary total disability (TTD) payments are usually two-thirds of the wages you were earning before you were injured.

Example: If the gross wages that you would be earning if you were not injured are \$300 per week, your TTD payments will be \$200 per week.

Maximum Limits on TTD Payments

You can’t receive more than a maximum weekly amount set by law. Therefore, if you earned more than a certain amount of wages before you were injured, you could receive *less* than two-thirds of those wages.

- If your date of injury is in 2003 and your gross wages before injury were more than \$903 per week, your TTD payments will be the maximum — \$602 per week.

- If your date of injury is in 2004 and your gross wages before injury were more than \$1,092 per week, your TTD payments will be the maximum — \$728 per week.
- If your date of injury is in 2005 and your gross wages before injury were more than \$1,260 per week, your TTD payments will be the maximum — \$840 per week.
- For injuries occurring in 2006, the maximum limit on TTD payments is either \$840 per week or the state average weekly wage, whichever is greater.
- For injuries occurring after 2006, the maximum limit on TTD payments increases every year to reflect increases in the state average weekly wage.

For examples, see page 29.

Minimum TTD Payments for Low-Wage Workers

You can't receive less than a minimum weekly amount set by law. Therefore, if you earned less than a certain amount of wages before you were injured, you could receive *more* than two-thirds of those wages.

- If your date of injury is between 2003 and 2006, and your gross wages before injury were \$189 per week or less, your TTD payments will be \$126 per week.
- For injuries occurring after 2006, minimum TTD payments increase every year to reflect increases in the state average weekly wage.

For examples, see page 29.

What payments will I receive if I'm on TPD?

Your employer may offer you different work that you can do safely while recovering, or your employer may give you a reduced work schedule. (See Chapter 4, "Working After Your Injury.") If you don't earn as much as you did before you were injured, you may be eligible to receive temporary partial disability (TPD) payments. These are usually two-thirds of your lost wages.

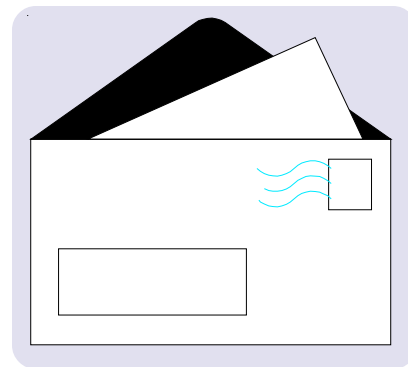
Example: If the gross wages you were earning before you were injured were \$300 per week and you are now back at work making \$210 per week, your loss in wages is \$90 per week. Your TPD payments are \$60 per week (two-thirds of \$90).

As with TTD benefits, the law sets maximum limits and minimum amounts for TPD payments.

Notices About TD Payments

The claims administrator must keep you up to date by sending letters that explain:

- ◆ How TD payment amounts were determined
- ◆ Reasons for any delay in TD payments
- ◆ Reasons for changes in TD payment amounts
- ◆ Why TD benefits are ending.



When do TD payments begin?

If your injury is covered by workers' compensation, your first TD payment is due within 14 days after your employer learns that:

- You have a job injury or illness
—and—
- Your treating doctor says your injury prevents you from doing your job.

You should receive this payment from the claims administrator. The claims administrator must also send you a letter explaining how the payment amount was calculated.

After the first payment, TD benefits must be paid every two weeks, for as long as you are eligible.

What happens if I don't get my payments on time?

Sometimes payments are delayed. If the claims administrator can't determine whether your injury is covered by workers' compensation or whether TD benefits must be paid, he or she may delay your first TD payment while investigating. A delay is usually not longer than 90 days.

If there is a delay, the claims administrator must send you a delay letter. It must explain:

- Why you won't receive payments within the first 14 days
- What information the claims administrator needs in order to decide if you are eligible for TD benefits

- When a decision will be made.

If there are further delays, the claims administrator must send you additional delay letters.

(Even if you received delay letters, if the claims administrator doesn't send you a letter *denying* your claim within 90 days after you filed the claim form or reported your injury, your claim is considered accepted in most cases.)

Is the claims administrator required to pay a penalty for delays in TD payments?

It depends. The claims administrator must pay you an additional 10% of the payment, if:

- The claims administrator sends a payment late
—and—
- You filed a claim form for your injury more than 14 days before the payment was due.

This is true even if there was a reasonable excuse for the delay. However, there's no penalty if the claims administrator can't determine, in the first 14 days after your employer learned about your injury, whether TD benefits must be paid and sends you a delay letter as explained above.

You could be awarded a substantial *extra* payment if there was *no* reasonable excuse for the delay.

When do TD payments end?






TD payments end when:

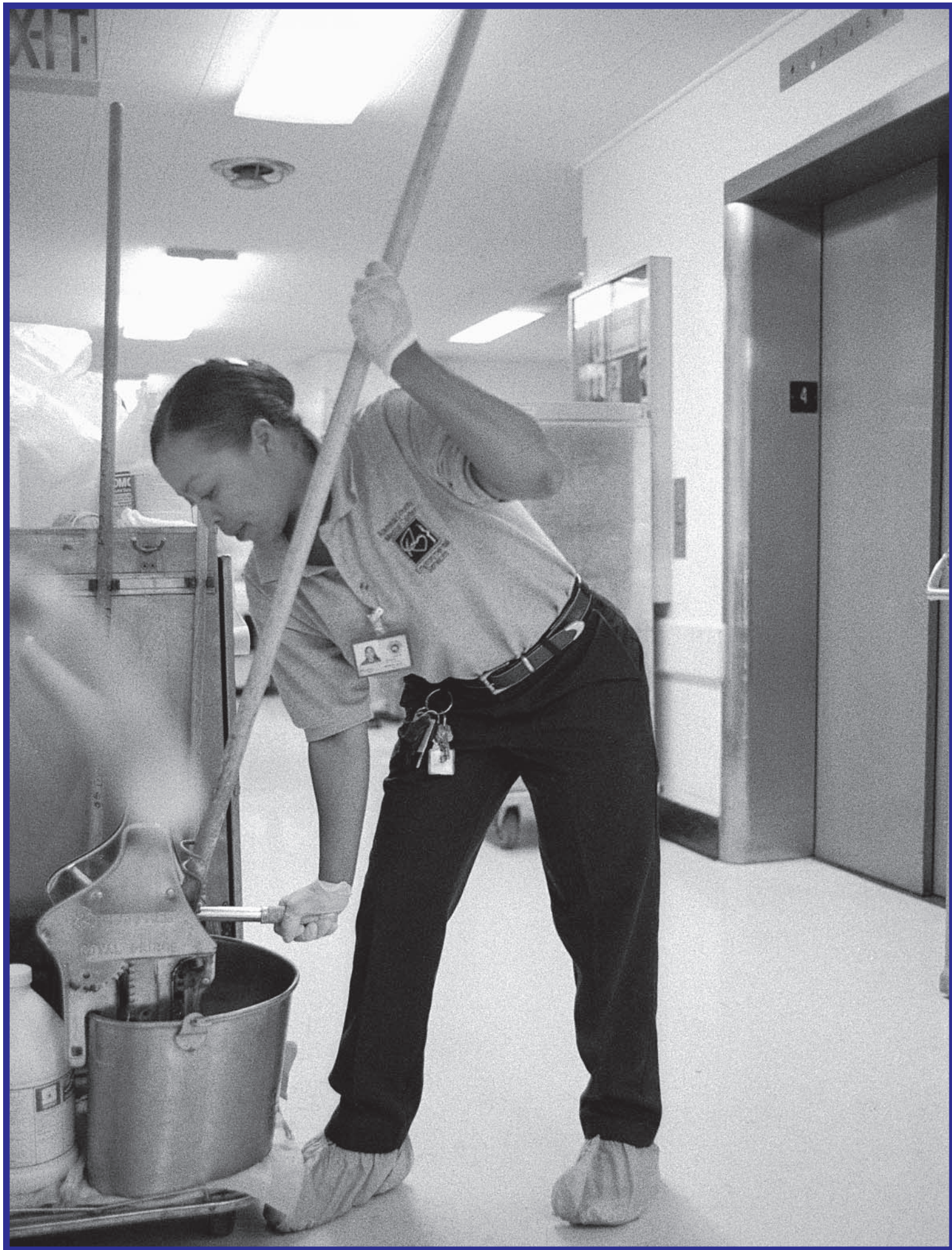
- Your treating doctor says you can return to your usual job (whether or not you actually return to work)
—or—
- You return to your usual job or to modified or alternate work at your regular pay
—or—
- Your treating doctor says that you will never recover completely *and* that you have reached a point where your condition is not improving and not getting worse. (When this happens, your condition is called “permanent and stationary.”)

When TD payments end, the claims administrator must send you a letter explaining why the payments are ending. The letter must list all TD payments sent to you. This letter must be sent within 14 days after your final TD payment.

If your treating doctor says that you will never recover completely, you may be eligible to receive permanent disability benefits or vocational rehabilitation services and payments (or both). See Chapter 5, “Permanent Disability Benefits,” and Chapter 6, “Vocational Rehabilitation Benefits.”

Temporary Total Disability Payments—Some Examples

Occupation	Date of Injury	Gross Wages Before Injury	TTD Payments	Reason
Carpenter 	2004	\$1,200 per week	\$728 per week	This is the maximum for workers injured in 2004.
 Line Worker	2005	\$1,500 per week	\$840 per week	This is the maximum for workers injured in 2005.
Secretary 	2005	\$750 per week	\$500 per week	This is two-thirds of the wages earned before the injury.
Baker and Janitor (1 person with 2 jobs) 	2005	\$420 per week as baker, \$150 per week as janitor \$570 per week total	\$380 per week (if the injury was caused by the higher paying job)	This is two-thirds of the wages from both jobs combined.
Nurse's Aide (part-time) 	2005	\$150 per week	\$126 per week	This amount is paid if the worker earned \$189/week or less before the injury (low-wage worker).



Working After Your Injury



For tips on how to “Keep Your Claim on Track,” see page 20. See also Chapter 7, “For More Information and Help.”

After a job injury, returning to work safely and promptly can help in your recovery. It can also help you avoid financial losses from being off work. This chapter describes how you can continue working for your employer.

When can I return to work, and what work can I do?

After you are hurt on the job, many people work with you to decide when you will return to work and what work you will do. These people include:

- Your treating doctor
- Your employer (supervisors or others in management)
- The claims administrator
- Your attorney, if you have one.



To review which doctor can treat you for a job injury or how to file a claim, see Chapter 2, “After You Get Hurt on the Job.”

Sometimes doctors and claims administrators do not fully understand your job or other jobs that could be assigned to you. Therefore, it is important that everyone stay in close touch throughout the process. You (and your attorney, if you have one) should *actively* communicate with your treating doctor, your employer, and the claims administrator about:

- The work you did before you were injured
- Your medical condition and the kinds of work you can do now
- The kinds of work that your employer could make available to you.

What happens while I am recovering?

Soon after your injury, the treating doctor examines you and sends a report to the claims administrator about your medical condition. If the treating doctor says you are able to work, he or she should describe:

- Clear and specific limits, if any, on your job tasks while recovering. These are called “work restrictions.” They should be based on full and accurate information from you and your employer about the activities and demands of your job. They are intended to protect you from further injury.

Example: No lifting over 50 pounds at any time. No lifting over 30 pounds more than 10 times per hour. No lifting over 30 pounds more than 15 minutes per hour.

- Changes needed, if any, in your schedule, assignments, equipment, or other working conditions while recovering.

Example: Provide headset to avoid awkward positions of the head and neck.

If the treating doctor reports that you cannot work at all while recovering, you cannot be required to work.



To review the steps you can take if you disagree with a medical report, see Chapter 2, pages 17–18.

If You Can Work With Restrictions

If your treating doctor reports that you can return to work with work restrictions, any work that your employer assigns must meet these restrictions. Your employer may, for example, change certain tasks, reduce your time on certain tasks, or provide helpful equipment. Or, your employer may say that work like this is not available — if this happens, you cannot be required to work.

If You Can Work Without Restrictions

If your treating doctor reports that you can return to your job without restrictions, your employer usually must give you the same job and pay that you had before

TD Benefits

- ◆ If you lose wages while recovering, you may be eligible for temporary disability (TD) payments. To learn about these payments, see Chapter 3.

you were injured. The employer can require you to take the job. This could happen soon after the injury, or it could happen much later, after your condition has improved.

My employer assigned work that seems to violate my work restrictions. What can I do?

You should show the doctor's work restrictions to your employer and discuss how the restrictions can be met. You don't have to accept an assignment that does not meet the restrictions. If you refuse this kind of assignment, you should clearly explain to your employer how it fails to meet the restrictions. If possible, do this in writing.

If your employer takes or threatens action against you because you won't accept this work assignment, this could be a violation of California Labor Code section 132a, which prohibits discrimination against injured workers.

If your employer cannot give you work that meets the work restrictions, the claims administrator must pay temporary total disability benefits (see Chapter 3).

If you have questions or need help, use the resources in Chapter 7. Don't delay, because there are *deadlines* for taking action to protect your rights.

What happens if I don't fully recover?

Your treating doctor may determine that you will never be able to return to the same job or working conditions that you had before you were injured.

The doctor should report this in writing. The report should include permanent work restrictions to protect you from further injury.

(In some cases, you and the claims administrator first fill out a "Description of Employee's Job Duties" on form RU-91. This form is required if you have been off work 90 days. The doctor then reviews what you wrote on the form to determine whether you will be able to go back to your old job and working conditions.)



To review the steps you can take if you disagree with a medical report, see Chapter 2, pages 17–18.

PD Benefits

- ◆ If the treating doctor reports that you will never recover completely, you may be eligible for permanent disability (PD) payments. To learn about these payments, see Chapter 5.

Information from the Claims Administrator

If your treating doctor reports that you probably will never be able to return to the same job or working conditions that you had before you were injured, the claims administrator must send you:

- a. A letter stating that you may be eligible for vocational rehabilitation benefits. These benefits are described in Chapter 6.
- b. A letter stating whether your employer is offering you work. Often this is the same letter as above. If you are offered work, the claims administrator must also send you an “Offer of Modified or Alternative Work” on form RU-94.
- c. A state pamphlet called “Help in Returning to Work.”
- d. A copy of the doctor’s report described above, with instructions on what to do if you disagree with the report.

The claims administrator must also send you these documents if you have been totally disabled because of your injury for more than 365 days.

If Your Employer Offers You Work

If the claims administrator’s letter says that your employer is offering you work, the job must meet the work restrictions in the doctor’s report.

The offer could involve either of the following:

1. **A modified job.** This is your old job with changes that meet the doctor’s work restrictions. It must last at least 12 months and pay the same wages and benefits as your old job.

Examples: changing certain tasks, reducing time on certain tasks, changing the work station, providing helpful equipment.
2. **Alternative work.** This is work that is different from your old job. It must last at least 12 months, and it must pay at least 85% of the wages and benefits that you were paid at the time of injury. Also, it must be within a reasonable commuting distance of where you lived at the time of injury.

If your employer offers you a modified job or alternative work:

- You may have only 30 days to accept the offer. If you don’t respond within 30 days, your employer could withdraw the offer. (You have more time if the employer agrees.)
- The claims administrator probably won’t be required to give you vocational rehabilitation benefits. This is true *whether or not* you accept the offer.

Your employer may offer work that will last at least 12 months but does not meet the other requirements of a modified job or alternative work. If this happens, and:

- You *accept* the offer, you could *lose* your right to receive vocational rehabilitation benefits.
- If you want to preserve your right to these benefits, you should reply that you cannot accept the offer and explain on form RU-94 how the work does not meet the requirements.

Note: If you accept an offer of work that will end sooner than 12 months, you do *not* lose your right to vocational rehabilitation.

If Your Employer Doesn't Offer You Work

If the claims administrator's letter says that your employer is not offering you work, the letter must say whether the claims administrator is offering vocational rehabilitation benefits instead.

If you are offered these benefits, you may have only 90 days to reply in writing that you want them, want an evaluation, or want a delay.

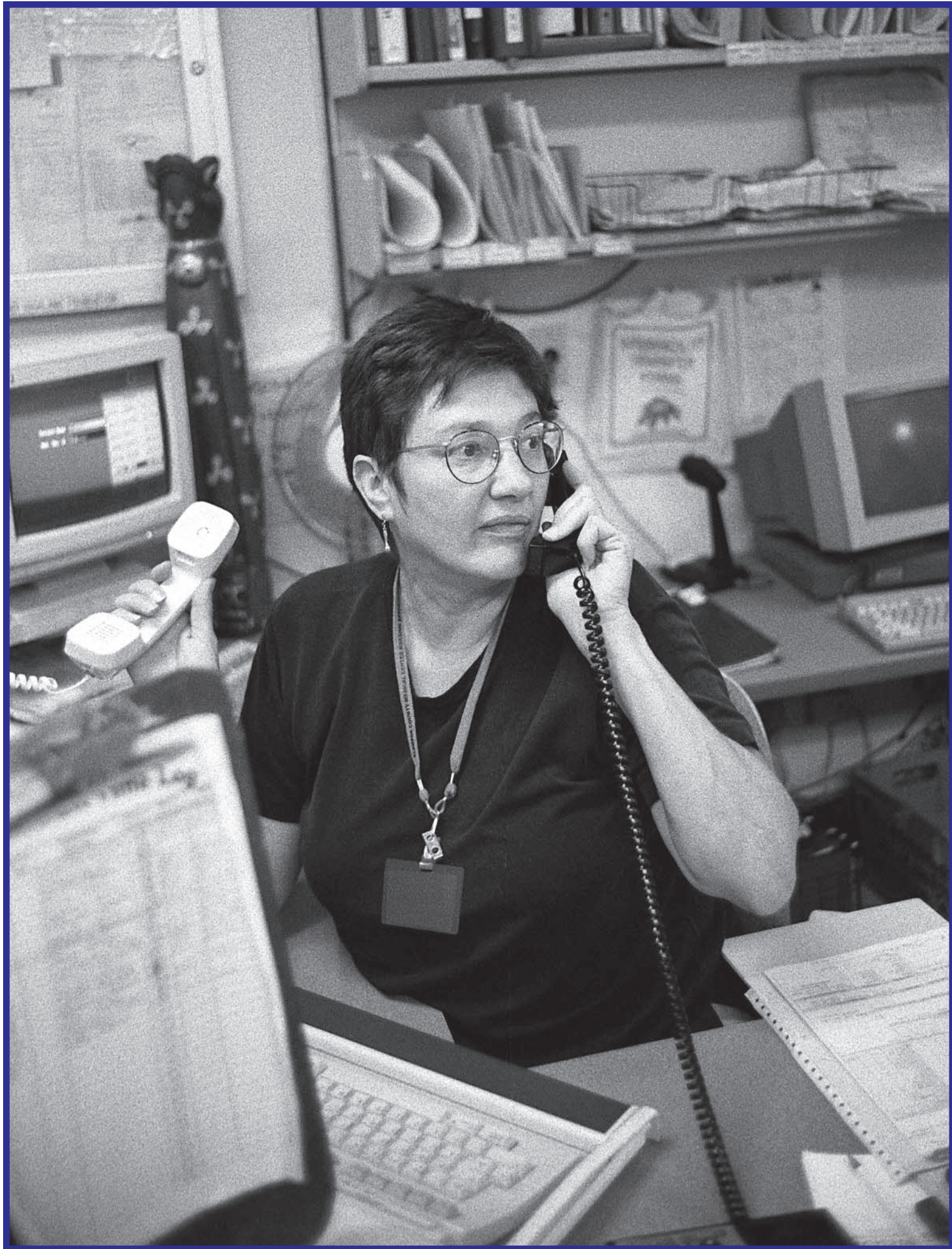
If you don't reply within 90 days, you could lose your right to receive vocational rehabilitation. (You have more time to reply if the claims administrator doesn't remind you in writing 45 to 70 days after the original letter.)

My employer will not offer or assign me the kind of work that I want. What can I do?

In some cases, the work assigned or offered to you may seem unfair, or your employer may not offer you any work at all. An employer, however, is not always required to offer you a job that you want. For example, there may not be any jobs you want that meet the doctor's work restrictions. Or your employer's decision may be justified by business realities.

On the other hand, if the reason your employer will not offer you the work you want is because you have a job injury or because you requested workers' compensation benefits, this could be a violation of California Labor Code section 132a. Similarly, if the reason your employer will not offer you the work you want is because you have a serious and permanent disability, this could be a violation of the federal Americans With Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA).

If you have questions or need help, use the resources in Chapter 7. Don't delay, because there are *deadlines* for taking action to protect your rights.



Permanent Disability Benefits



For tips on how to “Keep Your Claim on Track,” see page 20. See also Chapter 7, “For More Information and Help.”

What are permanent disability benefits?

Most workers recover from their job injuries. But some continue to have problems. If your treating doctor says you will never recover completely and will always be limited in the kinds of work you can do, you have a permanent disability. This means you are probably eligible for permanent disability (PD) benefits.

PD benefits are payments that help make up for limitations in your ability to compete for jobs in the *future*. However, you don’t have to lose your *current* job to be eligible for PD benefits.

PD benefits are limited. If you lose income, PD benefits may not cover all the income lost. If you experience losses unrelated to your ability to compete for jobs, PD benefits will not cover those losses.

Other Benefits Besides PD

If you have a permanent disability, you may also be eligible to receive:

- ◆ Medical care for your injury, described later in this chapter.
- ◆ Vocational rehabilitation services to help you find another job. To find out about these services, see Chapter 6, “Vocational Rehabilitation Benefits.”
- ◆ Other financial help, such as Social Security disability benefits and benefits offered by some employers and unions. To find out about these benefits, use the resources in Chapter 7.

What is a P&S report?

When you reach a point where your medical condition is not improving and not getting worse, your condition is called “permanent and stationary” (P&S). When this happens, your treating doctor writes a P&S report.

The P&S report should describe:

- Specific medical problems, such as how much you can move the injured parts of your body and how much pain you have. These are called “objective” and “subjective” factors.
- Limits on the work you can do. These are called “work restrictions.”
- Medical care that you may need in the future for your injury.
- Whether you may be eligible for vocational rehabilitation benefits.

Your treating doctor sends the P&S report to the claims administrator.

Important! The P&S report will affect your future benefits. You have a right to receive a copy of it. Request in writing that the claims administrator or your doctor give you copies of all medical reports.

Your treating doctor must use special language to describe your disability. This language affects your benefits. If you have questions, ask the doctor. Read the P&S report carefully, make sure it’s complete, and see if you agree with the doctor’s conclusions. Information that is incorrect or left out could result in loss of some benefits.

I don’t agree with the P&S report. What can I do?

Sometimes different doctors have different opinions about a worker’s disability. You have a right to challenge the P&S report.



To review the steps you can take if you disagree with a medical report, see Chapter 2, pages 17–18.

What is a rating?

A “rating” is a percentage that estimates how much your disability limits the kinds of work you can do. It determines the amount of your PD benefits.

Ratings are based on four factors:

1. Your medical condition, as described in the P&S report or in a medical-legal report (medical-legal reports are described in Chapter 2, pages 17–18).

2. Your date of injury
3. Your age when injured
4. Your occupation (based on your job at the time of injury).

A rating of 100% means that you have a permanent *total* disability — for example, if you lose the use of both hands. Ratings of 100% are very rare. A rating of between 1% and 99% means you have a permanent *partial* disability. Most injured workers do not have a permanent disability, and those who do usually have ratings between 5% and 30%.

You, your attorney, or the claims administrator can ask a state disability rater to rate your disability. (If you were examined by a QME and don't have an attorney, a state disability rater will automatically rate your disability.)

Also, the claims administrator and your attorney may each try to predict a rating that a workers' compensation judge would consider appropriate.

The "Schedule for Rating Permanent Disabilities" is used to rate disabilities based on the four factors above. There are two schedules, depending on your date of injury. To see the schedule that applies to you, contact a state Information & Assistance officer (see pages 56–57). To view the schedule for workers injured in April 1997 or later, go to the Division of Workers' Compensation website: www.dir.ca.gov/dwc (link to: Reports, Schedules, and Publications).

How Doctors' Reports Affect Ratings

Your medical condition, as described in the P&S report or medical-legal report, is the most important factor affecting ratings of your disability. (Your date of injury, age when injured, and occupation also affect ratings of your disability.)

Example: Sometimes different doctors have different opinions about a worker's disability. Here is how the opinions of three different doctors could affect the rating of a worker with a back injury (ratings not adjusted for age or occupation):

Doctors' Reports	Rating
Doctor 1: "Patient lost one-quarter of her ability to lift."	10%
Doctor 2: "Patient lost one-half of her ability to lift, bend and stoop."	25%
Doctor 3: "Patient can only work half the time sitting and half the time standing or walking, with minimum demands for physical effort."	60%

I disagree with the rating by the claims administrator. What can I do?

You have a right to challenge the rating. Different people reviewing the same medical report will sometimes rate a worker's disability differently.

You or your attorney (if you have one) can negotiate with the claims administrator over the correct rating of your disability. You can request a rating by a state disability rater and use this rating in your negotiations. If you and the claims administrator can't agree on the rating of your disability, you can request that a workers' compensation judge decide on the correct rating.

I disagree with the rating by the state disability rater. What can I do?

If you don't have an attorney, you can ask the state Division of Workers' Compensation (DWC) to review the rating. They will determine if mistakes were made in the medical evaluation process or the rating process. This is called reconsideration of your rating. You can also present your case to a workers' compensation judge.

To get help in requesting reconsideration or presenting your case to a workers' compensation judge, contact a state Information & Assistance officer (see pages 56–57). Ask about possible delays in the reconsideration process.

If you have an attorney, he or she can present your case to a workers' compensation judge.

How are PD payments determined?

PD benefit amounts are set by law. The claims administrator will determine how much to pay you based on three factors:

1. Rating(s) of your disability
2. Your date of injury
3. Your wages before you were injured.

Examples: Here are examples of the total amount that a worker could receive in PD benefits:

For workers injured in 2004, who earned more than \$300 per week before they were injured:

- If you have a rating of 30%, you may be eligible to receive approximately \$29,000 (total) in PD benefits.

- If you have a rating of 4%, you may be eligible to receive approximately \$3,200 (total) in PD benefits.

For workers injured in 2005, who earned more than \$330 per week before they were injured:

- If you have a rating of 30%, you may be eligible to receive approximately \$32,000 (total) in PD benefits.
- If you have a rating of 4%, you may be eligible to receive approximately \$3,500 (total) in PD benefits.

When will I receive PD payments?

If you have a permanent *partial* disability, you are eligible to receive the total amount of your PD benefits spread over a fixed number of weeks. If you have a permanent *total* disability, you are eligible to receive a fixed level of PD payments for the rest of your life.

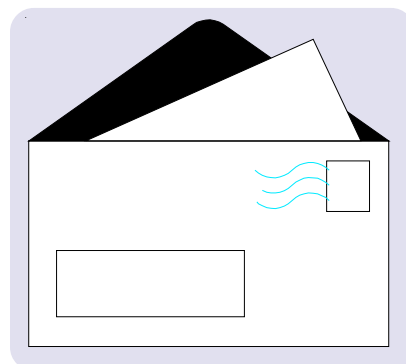
If you were receiving temporary disability (TD) benefits, the first PD payment is due within 14 days after the final TD payment. If you weren't receiving TD benefits, you should receive the first PD payment within 14 days after your treating doctor says your condition is permanent and stationary.

After the first payment, PD benefits must be paid every 14 days. They end when you reach the maximum amount allowed by law or when you settle your case and receive a lump sum. **Note:** This lump sum is usually reduced by the PD benefits that you already received, including any lump sum advances.

Notices About PD Payments

The claims administrator must keep you up to date by sending letters that explain:

- ◆ How PD payments were determined
- ◆ When you will receive PD payments
- ◆ Reasons for any delay in PD payments
- ◆ Reasons for not paying PD benefits.



Is the claims administrator required to pay a penalty for delays in PD payments?

Yes. If the claims administrator sends a payment late, he or she must pay you an additional 10% of the payment.

This is true even if there was a reasonable excuse for the delay and even if the claims administrator sends a letter explaining the delay. (Note, however, that this penalty is not required if you did not file a claim form for your injury.)

You could be awarded a substantial *extra* payment if there was *no* reasonable excuse for the delay.

Can my case be settled?

Yes. After your disability is rated, the claims administrator may offer to settle your case. A settlement is an agreement between you and the claims administrator. There are two different ways to settle your case:

1. Stipulations with Request for Award (“Stips”)

- **Payments.** You and the claims administrator agree on when and how long you’ll continue to receive PD payments. You also agree on how much each payment will be.
- **Medical care.** The claims administrator usually agrees to keep paying for medical care for your injury, as long as care is needed.
- **Possible changes in benefits.** If your condition gets worse, you have a right to request additional workers’ compensation benefits. Similarly, if your condition improves, the claims administrator has a right to request that the benefits be reduced. Usually a request for increase or decrease in benefits must be made within five years after the date of your injury.

2. Compromise and Release (“C&R”)

- **One payment.** The claims administrator agrees to pay you a lump sum. This covers the PD payments you haven’t received yet and other benefits. (Vocational rehabilitation benefits, however, can only be included in a C&R in some situations. See Chapter 6, page 47.)
- **Medical care.** If the lump sum (above) covers the estimated cost of future medical care, the claims administrator will no longer pay your doctor. This becomes your responsibility.

- **No changes in benefits.** You don't have the right to request additional workers' compensation benefits if your condition gets worse. Similarly, the claims administrator doesn't have the right to request that your benefits be reduced if your condition improves.

If you and the claims administrator agree on a settlement, a workers' compensation judge must review it to determine whether it is adequate.

What if I don't agree with the claims administrator's settlement offers?

You are not required to accept the claims administrator's offers. You can negotiate a settlement. If you can't reach an agreement with the claims administrator, you can present your case to a workers' compensation judge. The judge will decide what benefits you will receive. This decision is called a Findings and Award. It will be sent to you in writing.

Negotiating a settlement or presenting your case to a workers' compensation judge can be difficult. To get help, use the resources in Chapter 7.



Vocational Rehabilitation Benefits



For tips on how to “Keep Your Claim on Track,” see page 20. See also Chapter 7, “For More Information and Help.”

What are vocational rehabilitation benefits?

Vocational rehabilitation benefits include:

- Services to help you find a job, if you are unable to do your old job and your employer doesn’t offer you other work. The services may include, for example, counseling, training, education, or self-employment.
- A maintenance allowance to help with living expenses while receiving these services.

Receiving vocational rehabilitation services does not guarantee that you will find a job, or that it will pay the same as your old job.

Are there dollar limits on these benefits?

Yes. Usually the claims administrator is only required to pay up to \$16,000 (total) for vocational rehabilitation benefits. This includes fees paid to a rehabilitation counselor, costs of training or education, and maintenance allowance payments while you are in vocational rehabilitation.

How can I obtain vocational rehabilitation?

As discussed in Chapter 4, “Working After Your Injury,” the claims administrator may *offer* you vocational rehabilitation.

You also can *request* it in some situations. For example, you can request vocational rehabilitation if you weren’t ready for the services before, but now you are ready. The deadline to request vocational rehabilitation depends on many factors.

To get help requesting vocational rehabilitation benefits, use the resources in Chapter 7.

What happens next?

If you accept an offer of vocational rehabilitation or your request for vocational rehabilitation is approved, the claims administrator will suggest a rehabilitation counselor to evaluate and counsel you. This person is also called a qualified rehabilitation representative, or QRR.

The claims administrator must reach agreement with you on the person who will be your rehabilitation counselor.

Am I required to use the services of a rehabilitation counselor?

Usually a worker is required to use the services of a rehabilitation counselor while in vocational rehabilitation. Fees paid to the counselor are part of the \$16,000 limit on your vocational rehabilitation benefits.

However, if you are already enrolled at a community college, state university, or the University of California, it is possible that funds normally paid for counseling may be used to help pay for your college or university costs.

To request permission to have these funds pay for college or university costs, contact a state Division of Workers' Compensation rehabilitation consultant. Check the Government Pages at the front of the white pages of a phone book. Look under: State Government Offices/Industrial Relations/Workers' Compensation.

What happens after the rehabilitation counselor is selected?

After the rehabilitation counselor is selected, he or she meets with you to determine whether you will be able to participate in vocational rehabilitation.

If you are able to participate in vocational rehabilitation, you and your rehabilitation counselor jointly prepare a written vocational rehabilitation plan.

The plan could include one of the following:

- A modified job or alternative work with your employer (even if your employer did not offer this earlier)
- Job placement with another employer
- On-the-job training
- Education or training in a school
- Self-employment.

After preparing the plan, you receive the services described in the plan. You may also receive job-placement counseling from the rehabilitation counselor.

What payments can I receive for living expenses while in vocational rehabilitation?

If you are receiving temporary disability (TD) payments, you continue to receive them while participating in vocational rehabilitation. They continue for as long as you are eligible for TD. (To learn about TD payments, see Chapter 3.) TD payments are not part of the \$16,000 limit on vocational rehabilitation benefits.

If you are not receiving TD payments, you may be eligible to receive:

- Vocational rehabilitation maintenance allowance (VRMA) payments. These can be up to \$246 per week (depending on your wages before injury), for up to 52 weeks. VRMA payments are part of the \$16,000 limit on your vocational rehabilitation benefits.
- Permanent disability (PD) payments in some situations, to supplement the maintenance allowance. To learn about PD payments, see Chapter 5.

Can I decline vocational rehabilitation?

Yes. You may reject an offer of vocational rehabilitation benefits if you do not need or want the services. If you reject this offer, however, you may lose your right to receive vocational rehabilitation in the future.

Can I exchange vocational rehabilitation benefits for cash?

If your date of injury is 2003 or later and you are represented by an attorney, you may give up your rights to future vocational rehabilitation benefits as part of a settlement. (A settlement is an agreement between you and the claims administrator about your workers' compensation case. See Chapter 5, pages 42–43.) In a settlement involving vocational rehabilitation benefits, you would receive a lump-sum payment, not greater than \$10,000, to be used in self-directed vocational rehabilitation.

If your date of injury is 2003 or later and you are *not* represented by an attorney, or if your date of injury is before 2003 (whether or not you are represented by an attorney), you cannot give up your rights to future vocational rehabilitation benefits as part of a settlement unless certain conditions are met.

I disagree with a decision that affects my vocational rehabilitation benefits. What can I do?

You can contact your employer, the claims administrator, a state Information & Assistance officer, an attorney, or your union. You can also request help from a state Division of Workers' Compensation rehabilitation consultant. Rehabilitation consultants oversee vocational rehabilitation procedures, make decisions about vocational rehabilitation benefits, and help resolve disputes. For instructions on getting help from a rehabilitation consultant, contact an Information & Assistance officer or an attorney.

The resources listed above are described in Chapter 7. Don't delay, because there are *deadlines* for taking action to protect your rights.



For More Information and Help

Your Employer	51
The Claims Administrator	51
State Division of Workers' Compensation	51
State Industrial Medical Council	52
Applicants' Attorneys	52
Your Treating Doctor	52
Labor Organizations	52
Occupational Health Clinics	52
Injured Worker Support Groups	53
Health & Safety Agencies and Organizations	53
Other State and Federal Agencies—Financial Assistance	53
Other State and Federal Agencies—Discrimination Complaints ...	54
Books and Other Materials	54
Questions & Answers About State Information & Assistance Services	56
Questions & Answers About Attorneys	58

- **Your Employer.** Your employer is required to post information and give you written materials that explain workers' compensation. If you have questions, you can contact your supervisor, someone else in management, or your employer's personnel or benefits department.
- **The Claims Administrator.** This person handles workers' compensation claims for your employer. Most claims administrators work for insurance companies or other organizations that handle claims for employers. Some claims administrators work directly for large employers that handle their own claims. This person may also be called a claims examiner or claims adjuster. The claims administrator is required to send you written information about your claim and may answer questions. If you can't reach the claims administrator, ask to speak with his or her supervisor.
- **State Division of Workers' Compensation.** DWC administers workers' compensation laws and provides information and help to injured workers. Check the Government Pages at the front of the white pages of a phone book. Look under: State Government Offices/Industrial Relations. See also the DWC website: www.dir.ca.gov/dwc.

Information & Assistance. I&A officers answer questions and help injured workers resolve problems with their claims. Their services are free. For more information, see “Questions and Answers About State Information & Assistance Services” on pages 56–57.

Workers’ Compensation Appeals Board. This is where workers’ compensation judges hear cases and decide on problems and disputes. If a problem can’t be resolved through discussions with the claims administrator, an I&A officer can help you request a hearing before a workers’ compensation judge, or an attorney can request a hearing and represent you before the judge. If you disagree with a decision of a workers’ compensation judge, you can request reconsideration of the judge’s decision by a seven-member Appeals Board.

Vocational Rehabilitation. State rehabilitation consultants oversee vocational rehabilitation, make decisions about vocational rehabilitation benefits, and help resolve problems.

- **State Industrial Medical Council.** The IMC oversees qualified medical evaluators (QMEs). If you have problems with a QME or QME report, call toll-free: 1-800-794-6900 or 1-800-999-1041. See also the IMC website: www.dir.ca.gov/imc.
- **Applicants’ Attorneys.** These are lawyers who represent injured workers in their workers’ compensation cases. For more information, see “Questions & Answers About Attorneys” on pages 58–59.
- **Your Treating Doctor.** You can ask your treating doctor about the kind of medical care you need, the kind of work you can do while recovering, and whether you’ll have a permanent disability. You can also ask your treating doctor for copies of all medical reports that he or she sends to the claims administrator.
- **Labor Organizations.** Your union may help resolve problems with your workers’ compensation claim, tell you about other benefits, negotiate changes needed in your job, protect you from discrimination, and refer you to legal services. You can also seek help from a central labor council or building trades council in your area.
- **Occupational Health Clinics.** Doctors at occupational health clinics specialize in work-related injuries and illnesses. For information about occupational health clinics, call the Association of Occupational and Environmental Clinics at 1-202-347-4976, or ask your personal physician or health plan. See also the AOEC website: www.aoec.org.

- **Injured Worker Support Groups.** These groups share practical information and provide support for people with job injuries. For information about support groups and other resources for injured workers, see the website of the CTD Resource Network, Inc.: www.tifaq.org. Through this website, you can link to: Support Groups.

■ **Health & Safety Agencies and Organizations**

For help with health or safety hazards at work:

California Division of Occupational Safety and Health (Cal/OSHA). Check the Government Pages at the front of the white pages of a phone book. Look up: State Government Offices/Industrial Relations/Occupational Safety & Health. Cal/OSHA takes worker complaints, inspects workplaces, and enforces health and safety laws. See also the Cal/OSHA website: www.dir.ca.gov/dosh.

Labor Occupational Health Program (LOHP), University of California at Berkeley (phone: 1-510-642-5507; website: www.lohp.org). Offers information, training, and help on health and safety matters, including workers' compensation. Serves workers, unions, and others in California and nationwide.

Labor Occupational Safety and Health Program (LOSH), University of California at Los Angeles (phone: 1-310-794-5964; website: www.losh.ucla.edu). Offers information, training, and help on health and safety matters, including workers' compensation. Serves workers, unions, and others in California and nationwide.

■ **Other State and Federal Agencies—Financial Assistance**

California Employment Development Department (EDD) (phone: 1-800-480-3287). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: State Government Offices. EDD gives information on State Disability Insurance (SDI) and unemployment insurance (UI) benefits. See also the EDD website: www.edd.ca.gov.

U.S. Social Security Administration (SSA) (phone: 1-800-772-1213). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: United States Government Offices. SSA gives information on Social Security disability benefits and other benefits. See also the SSA website: www.ssa.gov.

■ Other State and Federal Agencies—Discrimination Complaints

If you face discrimination for filing a workers' compensation claim or for having a job injury, you can contact an Information & Assistance officer, an applicants' attorney, or your union.

If you face discrimination because of a permanent disability or other medical condition, you can contact an attorney who specializes in employment law. You can get names of attorneys from a local bar association, a county legal aid society, your union, or other injured workers. You can also contact the State Bar of California about lawyer referral services (phone: 1-415-538-2250; website: www.calbar.ca.gov), or check the yellow pages of a phone book and look under: Attorney Referral Service.

You can also ask for help from these agencies:

U.S. Equal Employment Opportunity Commission (EEOC) (phone: 1-800-669-4000). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: United States Government Offices/Discrimination. See also the EEOC website: www.eeoc.gov.

California Department of Fair Employment and Housing (phone: 1-800-884-1684). For a local office, check the Government Pages at the front of the white pages of a phone book. Look under: State Government Offices. See also the DFEH website: www.dfeh.ca.gov.

■ Books and Other Materials

Your Medical Evaluation and ***Getting Your Medical Evaluation***. Available in English and Spanish. For free copies, contact the Industrial Medical Council, P.O. Box 8888, San Francisco, CA 94128-8888 (phone: 1-800-794-6900; website: www.dir.ca.gov/imc).

California Labor Code. Contains most of the California workers' compensation laws. Available in public libraries and law libraries. Can be viewed online: www.dir.ca.gov. Important sections include:

- Eligibility for benefits: 3350-3371, 3600-3605, 5401
- Rules against suing employers; exceptions: 3602, 3706, 4558
- Nondiscrimination: 132a
- Fraud: 3820
- Willful misconduct by employer or employee: 4551-4553.1
- Rights to choose the treating physician: 3550(e), 4600-4601
- Medical evaluations: 139.2, 4060-4067.5, 4620-4628

- TD and PD benefits: 4453-4459, 4650-4663
- Vocational rehabilitation: 139.5, 4635-4647
- Death benefits: 4700-4728
- Settlement: 5000-5106

Caution: Certain rules that apply to your case may be found in case law and not the Labor Code. Case law includes past decisions of workers' compensation judges, the Appeals Board, and state courts.

Schedule for Rating Permanent Disabilities. This state publication is used to rate permanent disabilities. There are two schedules, depending on your date of injury. To see the schedule that applies to you, contact a state Information & Assistance officer (see pages 56–57). To view the schedule for workers injured April 1997 or later, go to the Division of Workers' Compensation website: www.dir.ca.gov/dwc (link to: Reports, Schedules, and Publications).

Take Charge of Your Workers' Compensation Claim, 3rd edition, by Christopher A. Ball, 2002. A detailed guide for workers, available in bookstores or from Nolo Press (phone: 1-800-728-3555; website: www.nolo.com).

California Workers' Compensation Practice, 4th edition, Continuing Education of the Bar, California, updated 2002. A comprehensive reference for attorneys, available in law libraries.

Navigating the California Workers' Compensation System, 1996. A report of injured workers' experiences, prepared by U.C. Berkeley's Labor Occupational Health Program. For a free copy, contact the Commission on Health and Safety and Workers' Compensation (phone: 1-415-703-4220; website: www.dir.ca.gov/chswc).

Questions & Answers About State Information & Assistance Services

Q. How can state I&A officers help me?

A. I&A officers can give you workers' compensation forms and printed guides. The guides include:

- #01: How to File a Claim Form
- #02: How to Dismiss Your Attorney
- #03: How to File a Complaint with the Audit Unit
- #04: How to Request a Qualified Medical Evaluation
- #05: How to File a Petition for Commutation
- #06: How to File a Petition for Reconsideration
- #07: How to File a Declaration of Readiness to Proceed
- #08: How to File a Rehabilitation Appeal
- #09: How to File a Serious & Willful Misconduct Petition
- #10: How to File an Application for Adjudication of Claim
- #11: How to File a Petition for Discrimination (Labor Code 132a)
- #12: How to File a Petition to Reopen
- #13: How to Object to Your Summary Rating
- #14: How to File a Lien

I&A officers:

- May answer questions about your claim. Help is available in several languages.
- May call the claims administrator to help clear up misunderstandings.
- May hold meetings to resolve problems or disputes.
- *Cannot* actively prepare your case, argue on your behalf, or speak as your representative (unlike an attorney).

Q. How can I contact an I&A officer?

A. Call toll-free (phone: 1-800-736-7401) to hear recorded messages or request written materials.

Attend a free, one-hour I&A workshop (designed mostly for injured workers who do not have attorneys and whose cases have been accepted).

Call a local I&A officer, at an office listed on the next page.

State Division of Workers' Compensation (DWC) Information & Assistance Offices

State Information & Assistance (I&A) officers answer questions and help injured workers. Their services are free. The numbers listed below were effective as of December 2002.

◆ **Toll-Free: 1-800-736-7401**

Call this number to hear recorded messages.

◆ **District Offices:** (For addresses, check the Government Pages at the front of the white pages of your phone book. Look under: State Government Offices/Industrial Relations/Workers' Compensation. See also the DWC website: www.dir.ca.gov/dwc.)

- | | | |
|----------------------------------|------------------------------------|----------------------------------|
| • Anaheim
1-714-738-4038 | • Pomona
1-909-623-8568 | • Santa Monica
1-310-452-1188 |
| • Bakersfield
1-661-395-2514 | • Redding
1-530-225-2047 | • Santa Rosa
1-707-576-2452 |
| • Eureka
1-707-441-5723 | • Riverside
1-909-782-4347 | • Stockton
1-209-948-7980 |
| • Fresno
1-559-445-5355 | • Sacramento
1-916-263-2741 | • Van Nuys
1-818-901-5374 |
| • Goleta
1-805-968-4158 | • Salinas
1-831-443-3058 | • Walnut Creek
1-925-977-8343 |
| • Grover Beach
1-805-481-3296 | • San Bernardino
1-909-383-4522 | |
| • Long Beach
1-562-590-5240 | • San Diego
1-619-767-2082 | |
| • Los Angeles
1-213-576-7389 | • San Francisco
1-415-703-5020 | |
| • Oakland
1-510-622-2861 | • San Jose
1-408-277-1292 | |
| • Oxnard
1-805-485-3528 | • Santa Ana
1-714-558-4597 | |



Questions & Answers About Attorneys

Q. How can an attorney help me?

A. The job of an applicants' attorney is to:

- protect your rights
- plan a strategy for your case to obtain all the benefits owed to you
- be your advocate
- gather information to support your claim
- keep track of deadlines
- represent you in hearings before a workers' compensation judge
- tell you about additional claims and benefits that may be available.

Q. How are attorneys paid?

A. Most applicants' attorneys provide one free consultation. If you hire an attorney, you don't pay right away. Instead, the attorney's fee is taken out of some of your benefits later. The fee is usually 9% to 15% of your final permanent disability settlement or award, plus an additional amount if you receive vocational rehabilitation benefits. A workers' compensation judge must approve the fee.

Note: Often applicants' attorneys will not take cases where the worker does not have a permanent disability.

Q. When do I need an attorney?

A. You may need an attorney if:

- You believe your employer or the claims administrator is treating you unfairly or withholding benefits; or
- You have a permanent disability that limits you or causes pain; or
- You're not sure how to proceed with your case, and no one else will help.

Q. What are possible drawbacks of hiring an attorney?

A. The attorney's fee will be taken out of your benefits. Also, other people involved in your case may be allowed to speak only with your attorney on important matters, and cannot speak directly with you.

Q. How do I choose an attorney?

A. Choose one with experience in workers' compensation, preferably one who is certified by the State Bar of California as a workers' compensation specialist. You can get names of applicants' attorneys from the State Bar of California (phone: 1-415-538-2120; website: www.calbar.ca.gov), a local bar association, the California Applicants' Attorneys Association (phone: 1-800-459-1400; website: www.caaa.org), a county legal aid society, your union, or other injured workers.

Choose carefully. In your first meeting, see how well the attorney and his or her staff communicate with you. If you hire an attorney and then later want to switch, it may be difficult to find another attorney to take your case.



Glossary

This glossary gives brief explanations of terms that are commonly used in workers' compensation. These are not the full legal definitions.

AOE/COE

“Arising out of and in the course of employment,” or caused by a worker’s job and occurring while working. An injury or illness must be AOE/COE to be covered by workers’ compensation.

Accepted claim

A workers’ compensation claim in which the claims administrator agrees that the worker’s injury or illness is covered by workers’ compensation. Even if a claim is accepted, however, there may be delays or other problems. *Also called “admitted claim.”*

Agreed medical evaluator (AME)

A doctor who is selected by agreement between the injured worker’s attorney and the claims administrator to conduct a medical examination and prepare a medical-legal report to help resolve a dispute.

Alternative work

If your treating physician reports that you probably will never be able to return to the same job or working conditions that you had before you were injured, your employer is permitted to offer you alternative work instead of vocational rehabilitation benefits. This is work that is different from your old job. It must last at least 12 months, pay at least 85% of the wages and benefits that you were paid at the time of injury, and be within a reasonable commuting distance of where you lived at the time of injury.

Americans With Disabilities Act (ADA)

A federal law that prohibits discrimination against disabled persons. Employment provisions of the ADA are administered by the U.S. Equal Employment Opportunity Commission (EEOC).

Appeals Board

A group of seven commissioners who review and reconsider decisions of workers’ compensation administrative law judges.

Applicants' attorney

A lawyer who represents injured workers in their workers' compensation cases. "Applicant" refers to the injured worker.

Cal/OSHA

The Division of Occupational Safety and Health, which is a state agency that inspects workplaces and administers laws to protect the health and safety of workers in California.

California Labor Code section 132a

A state workers' compensation law that prohibits discrimination against injured workers and co-workers who testify in the injured worker's case.

Challenge

Disagree with, object to, or place in dispute.

Claim Form (DWC-1)

A form that a worker uses to report a job injury or illness to the employer.

Claims adjuster

See "claims administrator."

Claims administrator

A person who handles workers' compensation claims for employers. Most claims administrators work for insurance companies or other organizations that handle claims for employers. Some claims administrators work directly for large employers that handle their own claims. *Also called "claims examiner" or "claims adjuster."*

Claims examiner

See "claims administrator."

Compromise and release (C&R)

A type of settlement where the worker receives a lump sum payment and may become responsible for paying for future medical care for the injury.

Cumulative injury

An injury that was caused by repeated events or repeated exposures at work. Examples: hurting your wrist from doing the same motion over and over, losing your hearing because of constant loud noise.

Date of injury

If the injury was caused by one event (a specific injury), this is the date of the event. If the injury was caused by repeated exposures (a cumulative injury), this is the date that the worker knew or should have known that the injury was caused by work.

Death benefits

Payments to the spouse, children, or other dependents of a worker who dies from a job injury or illness.

Delay letter

A letter sent by the claims administrator to the injured worker that explains why payments are delayed, what information is needed before payments will be sent, and when a decision will be made about the payments.

Denied claim

A workers' compensation claim in which the claims administrator believes that the worker's injury or illness is not covered by workers' compensation, and has notified the worker of this decision.

Description of Employee's Job Duties (RU-91)

A form that is filled out jointly by the injured worker and the claims administrator, to enable the treating physician to determine whether the worker will be able to return to his or her usual job and working conditions.

Disability rater

An employee of the state Division of Workers' Compensation who rates an injured worker's permanent disability after reviewing medical reports or medical-legal reports that describe the worker's condition.

Disability rating

See "permanent disability rating."

Dispute

A disagreement about a worker's entitlement to payments, services, or other rights and benefits.

Division of Workers' Compensation (DWC)

A state agency that administers workers' compensation laws in California and provides information and assistance to injured workers and others about the workers' compensation system.

Fair Employment and Housing Act (FEHA)

A state law, administered by the California Department of Fair Employment and Housing, that prohibits discrimination against disabled persons. In some areas, the FEHA is more protective than the federal Americans With Disabilities Act (ADA).

Family and Medical Leave Act (FMLA)

A federal law, administered by the U.S. Department of Labor, that requires most employers of 50 or more employees to grant unpaid leave, without loss of job, to workers with serious health problems or who need to care for a child or other family member.

Filing

Sending or delivering a document to an employer or a governmental agency as part of a legal process. The date of filing is the date the document is received.

Findings and Award

A written decision by a workers' compensation administrative law judge about an injured worker's case, including payments and future medical care that must be provided to the worker.

Health care organization (HCO)

An organization that contracts with an employer or insurer to provide managed medical care in the California workers' compensation system.

Hearing

A legal proceeding or event where a workers' compensation administrative law judge holds a meeting to discuss issues or receives information from different persons in order to make a decision about a dispute or a proposed settlement.

Industrial Medical Council (IMC)

A state agency that certifies and oversees qualified medical evaluators (QMEs) in California and provides educational materials about the medical evaluation process.

Information & Assistance (I&A) officer

An employee of the state Division of Workers' Compensation who answers questions, assists injured workers, provides written materials, conducts informational workshops, and holds meetings to informally resolve problems with claims. Most of their services are designed to help workers who do not have an attorney.

Injury and Illness Prevention Program (IIPP)

A health and safety program that employers are required to develop and implement. This requirement is enforced by Cal/OSHA.

Judge

See "workers' compensation administrative law judge."

Medical care

See "medical treatment."

Medical-legal report

A report written by a doctor that describes an injured worker's medical condition. These reports are written to help clarify disputed medical issues.

Medical treatment

A workers' compensation benefit, offered to the injured worker, that is "reasonably required to cure or relieve from the effects of the injury." *Also called "medical care."*

Modified job

If your treating physician reports that you probably will never be able to return to the same job or working conditions that you had before you were injured, your employer is permitted to offer you a modified job instead of vocational rehabilitation benefits. This is your old job with changes that meet the doctor's work restrictions. It must last at least 12 months and pay the same wages and benefits as your old job.

Objective factors

Measurements, direct observations, and test results that a treating physician, a QME, or an AME describes as contributing to an injured worker's permanent disability.

Offer of Modified or Alternative Work (RU-94)

A form that a claims administrator sends to an injured worker if the treating physician reports that the worker probably will never be able to return to his or her job or working conditions, and the employer is offering modified or alternative work.

P&S report

A medical report written by a treating physician that describes the injured worker's medical condition when it has stabilized. *See also "permanent and stationary."*

Penalty

A fine charged to an employer or claims administrator and paid to the injured worker. It can refer to an automatic 10% penalty for a delay in one payment, or a substantial penalty for unreasonable delays in one or more payments.

Permanent and stationary (P&S)

The point at which a doctor reports that the injured worker's condition has stabilized, or is not expected to get any better or any worse. *See also "P&S report."*

Permanent disability (PD) benefits

Payments to a worker whose job injury permanently limits the kinds of work that he or she can do. **Permanent partial disability (PPD) benefits** are payments to a worker who can still work, but whose ability to compete in the open labor market is reduced. **Permanent total disability (PTD) benefits** are payments to a worker who is considered permanently unable to compete in the open labor market.

Permanent disability rating

A percentage that estimates how much a job injury permanently limits the kinds of work the worker can do. It is based on the worker's medical condition, date of injury, age when injured, and occupation when injured.

Personal physician

A doctor licensed in California with an M.D. degree (medical doctor) or a D.O. degree (osteopath), who has treated the injured worker in the past and has his or her medical records.

Physician

A medical doctor, an osteopath, a psychologist, an acupuncturist, an optometrist, a dentist, a podiatrist, or a chiropractor licensed in California. *The definition of "personal physician" is more limited. See above.*

Predesignation

Telling your employer in writing, before getting hurt on the job, that you wish to be treated by your personal physician in case of job injury. If you predesignate, you will be allowed to be treated by your personal physician right after injury, instead of a physician selected by your employer or the claims administrator.

Primary treating physician (PTP)

See “treating physician.”

Qualified injured worker (QIW)

An injured worker who probably will never be able to return to his or her usual job and working conditions, and who probably could find a suitable job after receiving vocational rehabilitation services.

Qualified medical evaluator (QME)

A doctor who is selected by either the injured worker, the worker’s attorney, or the claims administrator to conduct a medical examination and prepare a medical-legal report to help resolve a dispute. QMEs are certified by the state Industrial Medical Council.

Qualified rehabilitation representative (QRR)

A person who is trained and able to evaluate, counsel, and place disabled workers in new jobs. *Also called “rehabilitation counselor.”*

Rating

See “permanent disability rating.”

Reconsideration

A legal process for appealing a decision made by a workers’ compensation administrative law judge.

Reconsideration of a summary rating

A process for determining whether mistakes were made in the permanent disability rating of an injured worker who does not have an attorney.

Rehabilitation consultant

An employee of the state Division of Workers’ Compensation who oversees vocational rehabilitation procedures, makes decisions about vocational rehabilitation benefits, and helps resolve disputes.

Rehabilitation counselor

See “qualified rehabilitation representative (QRR).”

Restrictions

See “work restrictions.”

Schedule for Rating Permanent Disabilities

A state publication containing detailed information that is used to rate permanent disabilities.

Settlement

An agreement between the injured worker and the claims administrator about the workers’ compensation payments and future medical care that will be provided to the worker. Settlements must be reviewed by a workers’ compensation administrative law judge, to determine whether they are adequate.

Social Security disability benefits

Long-term financial assistance for totally disabled persons. These benefits are administered by the U.S. Social Security Administration. They may be reduced by workers' compensation payments that you receive.

Specific injury

An injury that was caused by one event at work. Examples: hurting your back in a fall, getting burned by a chemical that splashes on your skin, getting hurt in a car accident while making deliveries.

State Disability Insurance (SDI)

Short-term financial assistance for disabled workers in California. Workers with job injuries may apply for SDI when workers' compensation payments are delayed or denied. These benefits are administered by the state Employment Development Department.

State average weekly wage

The average weekly wage that was paid in the previous year to employees in California who were covered by unemployment insurance, as reported by the U.S. Department of Labor.

Stipulations with request for award (Stips)

A type of settlement where the claims administrator usually agrees to continue paying for medical care for the injury.

Subjective factors

The amount of pain and other symptoms reported by an injured worker, which cannot be directly measured or observed, that a doctor describes as contributing to the worker's permanent disability.

Temporary disability (TD) benefits

Payments to an injured worker who loses wages because the injury prevents the worker from doing his or her usual job while recovering. **Temporary partial disability (TPD) benefits** are payments to a worker who can do some work while recovering, but who earns less than before the injury. **Temporary total disability (TTD) benefits** are payments to a worker who cannot work at all while recovering.

Treating doctor

See "treating physician."

Treating physician

The doctor who is responsible for managing the overall care of the injured worker and who writes medical reports that affect the worker's benefits. *Also called "primary treating physician (PTP)" or "treating doctor."*

Uninsured Employers Fund (UEF)

A possible source of workers' compensation benefits for an injured worker whose employer is illegally uninsured in California. These benefits are administered by the state Division of Workers' Compensation.

Vocational rehabilitation

A workers' compensation benefit for injured workers who are permanently unable to do their usual job, and whose employers do not offer other work. It includes job placement counseling to help the worker find another job. It may also include retraining and a vocational rehabilitation maintenance allowance.

Vocational rehabilitation maintenance allowance (VRMA)

Payments to help with living expenses while participating in vocational rehabilitation.

Work restrictions

A doctor's description of clear and specific limits on an injured worker's job tasks, usually designed to protect the worker from further injury.

Workers' Compensation Appeals Board (WCAB)

The Appeals Board and workers' compensation administrative law judges.

Workers' compensation administrative law judge

An employee of the state Division of Workers' Compensation who makes decisions about disputes and approves settlements. They hold hearings at Workers' Compensation Appeals Board (WCAB) offices, and their decisions may be reviewed and reconsidered by the Appeals Board. *Also called "workers' compensation judge."*

Workers' compensation judge

See "workers' compensation administrative law judge."

To see a copy of this guidebook, contact an Information & Assistance (I&A) officer of the state Division of Workers' Compensation. For the address of an I&A officer in your area, call toll-free 1-800-736-7401, or check the Government Pages at the front of the white pages of a phone book and look up: State Government Offices/Industrial Relations/Workers' Compensation/Information and Assistance.

To view and download this guidebook, go to the following websites: www.dir.ca.gov/chswc and www.dir.ca.gov/dwc. Many public libraries provide access to the Web.

NOTE: This guidebook lists a variety of sources of information about workers' compensation. Inclusion on this list does not necessarily mean that these persons, organizations, and materials are endorsed, approved, or recommended by the State of California.



The information in this guidebook is true in most situations. However, some rules, exceptions, and deadlines not covered here may apply to you and affect your case. For example, a union contract may give additional rights or different procedures.

The information here describes the California workers' compensation system as of December 2002. It applies to most private, state, and local government employees whose "date of injury" is 1994 or later.

